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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/654,667	09/04/2003	Kenneth Gould	2816-026	5369
22208 7590 08/19/2008 ROBERTS, MARDULA & WERTHEIM, LLC 11800 SUNRISE VALLEY DRIVE SUITE 1000 RESTON, VA 20191				
EXAMINER				
JAKOVAC, RYAN J				
ART UNIT		PAPER NUMBER		
2145				
MAIL DATE		DELIVERY MODE		
08/19/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/654,667

**Applicant(s)**

GOULD ET AL.

**Examiner**

RYAN J. JAKOVAC

**Art Unit**

2145

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 September 2003.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-17 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 04 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date 11/12/2003, 09/04/2003  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Drawings***

1. Figures 1-2 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Examiner's Note***

2. Paragraph [0008] of the Applicant's disclosure describes Fig. 1 as "an example of such a typical DOCSIS-compliant network." Fig. 1 is therefore considered Prior Art. Fig. 2 is described as a configuration that has "become particularly popular recently." Fig. 2 is therefore considered prior art. Figure 1-2, and their associated paragraphs [0008-0022] detail well known systems and configurations as admitted by the Applicant in paragraph [0008], [0014], and [0019] and will be considered prior art by the Examiner.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-17 rejected under 35 U.S.C. 102(e) as being anticipated by Applicant's Admitted Prior Art (hereinafter AAPA).

Regarding claim 1, 10, AAPA teaches a system for providing subscriber controlled data filtering in a consumption based billing cable data network, the system comprising: a consumption based billing cable data network (AAPA, fig. 1-2.) further comprising a subscriber cable modem (AAPA, fig. 1, cable modem.), a cable modem termination system (AAPA, fig. 1, cable modem termination system.), cable network (AAPA, fig. 1, cable network.), and a consumption based billing agent (AAPA, [0015], charges are applied to users (i.e. subscribers).); a cable modem termination system gateway agent (AAPA, [0016], all traffic through the cable modem termination system is counted and charged to the assigned user.); a subscriber terminal (AAPA, fig. 1, computer terminals.); wherein the cable modem termination system gateway agent further comprises subscriber authorization criteria, computing means and data transfer blocking computer instructions (AAPA, [0015-0019], users are authorized for data transfer according to their consumption which is monitored and charged accordingly.); wherein the data transfer blocking computer instructions cause subscriber authorized data transfers to be forwarded and cause one or more corrective measures to be applied to data transfers not subscriber authorized (AAPA, [0019], subscribers are allowed, while data transferred not

subscriber authorized are blocked.); and wherein subscriber authorized data transfers are detected using one or more subscriber authorization algorithms (AAPA, [0018], filtering and blocking algorithms.). See also paragraphs [0008-0021].

Regarding claim 2, 11, AAPA teaches the system of claim 1 wherein the corrective measures to be applied to data transfers not subscriber authorized are selected from the group of corrective measures consisting of discarding data transfer, logging data transfer header information, reducing subscriber consumption counts by the number of data transfers not subscriber authorized and transmitting to the subscriber notification of data transfers not subscriber authorized (AAPA, [0019], non subscriber initiated access is blocked.).

Regarding claim 3, 4, 12, 13, AAPA teaches the system of claim 1 wherein the subscriber authorization algorithms are selected from the group of subscriber authorization algorithms consisting of stateful packet filtering, hybrid stateful packet filtering, computer virus detection, unsolicited electronic messages detection, daily time limits detection, daily consumption limits detection, private information detection, matching keywords, excluding keywords, matching uniform resource locators, excluding uniform resource locators, matching computer applications, excluding computer applications, third party uniform resource locator matching listings, third party uniform resource locator excluding listings, category of data transfer matching, and category of data transfer excluding (AAPA, [0019], stateful packet filtering.).

Regarding claim 6, AAPA teaches the system of claim 1 wherein the cable network is a hybrid fiber coaxial cable network (AAPA, fig. 1-2.).

Regarding claim 7, 15, AAPA teaches the system of claim 1 wherein the cable modem termination system further comprises the cable modem termination system gateway agent (AAPA, [0016], all traffic through the cable modem termination system is counted and charged to the assigned user.).

Regarding claims 8, 9, 16, 17, AAPA teaches the system of claim 1 wherein the consumption based billing agent automatically transmits an electronic message identifying current subscriber data transfer counts to subscriber upon the occurrence of a subscriber count trigger (AAPA, [0016-0017], counters are use which record data traffic. Subscribers are charged according to their limit. Subscribers obtaining higher use are charged for higher use.).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 5, 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over AAPA.

Regarding claims 5, 14 AAPA teaches the system of claim 3 wherein the subscriber authorization algorithm is hybrid stateful packet filtering.

AAPA does not expressly disclose wherein the subscriber authorization algorithm is hybrid stateful packet filtering, however the limitations are mere variations of packet filtering which at the time of invention would have been well known in the art.

It would have been obvious to one of ordinary skill in the art at the time of invention to combine hybrid stateful packet filtering with a system using stateful packet filtering since hybrid stateful packet filtering is an obvious variant of packet filtering for processing well known data types. In determination of obviousness as noted above, which is mere variation of the structure provided by the Applicant, Examiner cites the KSR decision in accordance with MPEP 2141 “When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill. *Id.* at \_\_\_, 82 USPQ2d at 1396.”

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RYAN J. JAKOVAC whose telephone number is (571)270-5003. The examiner can normally be reached on Monday through Friday, 7:30 am to 5:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason D. Cardone can be reached on (571) 272-3933. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

RJ

/Jason D Cardone/  
Supervisory Patent Examiner, Art Unit 2145